

# Joint-submission to the Human Rights Council's Third Universal Periodic Review of Viet Nam

by HRS – GPAR and partners

## I - Background and framework

- 1. Scope of international obligations.** By ratifications of CAT and CRPD in May 2015, Viet Nam has fulfilled recommendations by ten countries in 2014, four countries in 2009 and partly fulfill recommendations from four other countries in 2014.<sup>1</sup> The country now participates in seven among nine major human rights instruments.<sup>2</sup> Yet it has not accepted any of those individual complaint mechanisms by treaty bodies. In addition to an absence of a specific domestic human rights protection mechanism such as a constitutional court or an NHRI, victims of human rights violations therefore lack access to remedies.

### **Recommendations:**

- **(Repeated-R) Take steps to implement accepted recommendations in 2014 to withdraw its reservations with CERD before 2022.**<sup>3</sup>
  - Fully participate in CAT by giving recognition to the competence of the Committee following article 20 and 30 of the Convention.
  - **(R) Ratify Optional Protocols (OP) on individual complaints under different human rights instruments: CCPR-OP1; CEDAW-OP; CESCOP; CRC-OP-IC; and CRPD-OP.**<sup>4</sup>
  - Ratify the 2<sup>nd</sup> Optional Protocol to the ICCPR and OP-CAT.
- 2. Cooperation with UN Human Rights mechanism.** Viet Nam is catching up with its reporting obligations at different treaty bodies, with national reports for CAT and ICCPR have been submitted and the CERD report is in preparation. From the 2<sup>nd</sup> UPR, two visits of Special Procedures mandate-holders were conducted,<sup>5</sup> among pending requests for country visits by other 14 special procedures.<sup>6</sup>

### **Recommendations:** Continue its constructive cooperation with UN Human Rights Mechanisms through:

- Extending a standing invitation to all special procedures;
  - Encouraging non-state actors to engage with treaty bodies, the UPR and special procedures.
  - Actively seek technical cooperation with the Office of the High Commissioner for Human Rights.
- 3. NHRIs.** There is no independent NHRI in Viet Nam, despite its established commitments with different UN Human Rights mechanisms<sup>7</sup> among several concerns and recommendations to address this gap in the domestic institutional framework for human rights.<sup>8</sup> A number of workshops on NHRIs were organised in 2014 – 2017 but neither clear consideration nor a working agenda towards such establishment was announced. The Government set up a few inter-agencies mechanisms overseeing specific target groups such as the National Committee on People with Disabilities<sup>9</sup> and the National Committee on Children,<sup>10</sup> or the Steering Committee on Human Rights of the Government<sup>11</sup> secretariat by the police.<sup>12</sup> These mechanisms are not permanent full time independent bodies, neither they were endowed with full functions of human rights protection and promotion.<sup>13</sup>

### **Recommendations:**

- **(R) Take immediate action on establishing an independent human rights institution following the Paris Principles.**<sup>14</sup>
- Review and improve functions, practices and effectiveness of existing bodies in charge of human rights towards specialised and effective institutions in human rights protection and promotion.

**4. Human rights policy.** The latest white paper on human rights was published by the Government on Viet Nam's achievement in human rights protection and promotion was updated in 2017. To follow-up with the UPR or concluding observations by CRC or CEDAW, the government has adopted action plans with assignments to different ministries.<sup>15</sup> On the other hand, in several operational decisions of the Government at different levels, most important policies on human rights referred to were Directive No.44/CT-TW,<sup>16</sup> followed by the Prime Minister's Decision No.366/QD-Ttg.<sup>17</sup> These important policy documents, however, are not found published.

**Recommendations:**

- Continue its good practice, to adopt a comprehensive national action plan on the implementation of the country's human rights commitments, including recommendations from the UPR, treaty bodies and special procedures, **with clear indicators and benchmarks.** Mobilise non-state actors to participate in the development, implementation and monitoring of such action plan.
- Viet Nam should make all human rights policies, including those by the Communist Party, the Government and ministries available for public access.

**5. Human rights education.** A national project on the introduction of human rights in the school system by 2025 was introduced in 2017,<sup>18</sup> as a major response to two recommendations in 2014,<sup>19</sup> and Italy's recommendation in 2009. On the other side, human rights educational programs by civic organisations as accepted in other six recommendations<sup>20</sup> still facing challenges of lacking resources and an enabling legal framework to implement their activities, especially for those with international cooperation.<sup>21</sup>

**Recommendations:**

- Incorporate measures to ensure the quality and effectiveness of the national project on human rights education in the school system compatible with international standards; mobilise experts and civic groups to contribute and monitor the implementation of the project.
- Adopt a national strategy and action plan on human rights education following the World Programme for Human Rights Education.
- Provide an enabling environment for NGOs and civic groups to initiate and implement educational programs on universal values and human rights, including programs with international cooperation.
- Make human rights education a compulsory element in the training of public servants, especially for police, teachers and administrative cadres.

## **II – Substantive human rights**

### **A. Non-discrimination**

**6.** Viet Nam has accepted nine recommendations on combating discrimination,<sup>22</sup> in particular two recommendations on addressing the lack of a legislative framework to guarantee non-discrimination,<sup>23</sup> besides the concern and recommendation by the CESCR.<sup>24</sup> Different provisions on non-discrimination exist in a number of laws, however they are not consistent with international standards,<sup>25</sup> while no comprehensive law on non-discrimination exists and no special mechanism is made available for the appeal by victims of discrimination.<sup>26</sup>

**Recommendations:**

- Take steps to implement recommendations from the second UPR and CESCR through introducing a comprehensive law to guarantee non-discrimination by 2022.

- Following recommendation by CERD Committee in 2012, assess the reasons for the low number of complaints relating to discrimination,<sup>27</sup> based on which take measures to provide accessible and effective legal recourse for victims of discrimination.
- Inform the public on anti-discrimination regulations and mechanisms to complain, and assist victims of discrimination to seek remedies.

## **B. Death Penalty**

7. The number of crimes subject to death penalty was reduced but still include non-violent crimes. In 2014, Viet Nam accepted six among 29 recommendations regarding the death penalty, including reducing the scope of application of the death penalty,<sup>28</sup> increasing transparency in the application of the death penalty,<sup>29</sup> considering the adoption of a de-facto moratorium.<sup>30</sup> In the revision of the Penal Code 2015, the death penalty was removed from seven among 25 crimes.<sup>31</sup> Eight non-violent crimes remain in the scope of the capital punishment, together with other 10 crimes.<sup>32</sup> The official view of Viet Nam on the abolition of death penalty since the first UPR in 2009 remains effect.<sup>33</sup>
8. The application of the capital punishment in practice has increased and remains untransparent.<sup>34</sup> An article cited a report by the Office of the Supreme Court recorded 1,471 people were convicted death penalty during 1992 - 2002.<sup>35</sup> An official report from the Ministry of Public Security (MPS) published in its website in 2017 revealed the number of 1,470 people in the death row in the period of 01/07/2011 to 30/06/2016, among them 1,134 people were convicted during this period, and 429 people were executed.<sup>36</sup> The report then became unavailable from the MPS website. Without official records, it could be assumed based on these numbers that during five years of 2011-2016, the number of people convicted to death penalty was almost equal to that number for ten years during 1992-2002, which indicated an increase in the application of the capital punishment. Executions were conducted in discretion with no representation of civilian witness,<sup>37</sup> and the use of lethal injection drugs became unclear since the revision of the execution protocol in Decree 47/2013/NĐ-CP.<sup>38</sup> Inmates in the death row are given more disciplined and restricted access to visits by family members and acquaintances.<sup>39</sup>

### **Recommendations:**

- Continue to reduce the number of crimes subject to the death penalty, especially those non-violent and political crimes, to be inline with the Human Rights Committee's recommendations.
- Implement public education campaigns towards the abolishment of the death penalty, including specialised programs for public officials.
- **(R) Publish precise information on the number of people in the death row and their situations**, and the execution protocol<sup>40</sup> as a positive response to ECOSOC Resolution 1989/64.
- Introduce a moratorium with a view to abolition of the death penalty.
- **(R) Take concrete steps forward to a full recognition of the right to life by ratifying the second optional protocol of the ICCPR.**<sup>41</sup>

## **C. The right to fair and public trials<sup>42</sup>**

9. **Outdoor trials (xét xử lưu động) increased.** From 2015 to July 2016, 7,283 cases were tried outside of the courtrooms (11.8% of the total number of trials)<sup>43</sup> and this number in 2017 was 9,029.<sup>44</sup> Outdoor trials are treated as a measure on prevention and combating against crimes and legal violations,<sup>45</sup> as stated in the National Assembly's Resolution No.37/2012/QH13 dated 23/11/2012. The resolution requires the court system to increase the number of outdoor trials every year and report accordingly. There are no further rules, rationality or criteria on cases which may be tried outdoor. The practice of outdoor trial with thousands of attendants in some cases, may

undermine the presumption of innocence of defendants as the verdict may be pre-mediated to serve the purpose, and limit the role of lawyers in defending their clients. Such practice also limits the time that courts can adjudicate due to logistical reasons.<sup>46</sup> There were calls among judges to abolish this practice. However, the abolish is not within sight, especially as the Prime Minister has advocated for the introduction of outdoor trials against some alleged perpetrators.<sup>47</sup>

- 10. Duty to report crimes by lawyers:** The amended Penal Code effectively immunizes lawyers from their duty to report on clients' crimes in most cases, except for cases relating to national security and other significantly serious crimes (both potential and committed).<sup>48</sup> This duty to report is against the attorney-client privileges and jeopardizes the right to effective legal representation of defendants.
- 11. The lack of an independent and transparent administration of justice.** The Constitution recognised that judicial officials must adjudicate independently and only in accordance with the laws and any interference to the adjudication by any persons, organizations, agencies, bodies shall be strictly prohibited.<sup>49</sup> In practice, the Chief Judge of the Supreme People's Court must be decided by the CPV's Politburo, other key level judicial officers shall be decided by relevant CPV's bodies.<sup>50</sup> As the result, most (if not all) judges in Viet Nam must be members of the CPV. According to the National Integrity System Study in 2014, practices including pre-trial meetings among the investigation agency, the procuracy and the court before the trial) limits the independence of the judge, and citizens have rare opportunities to monitor the operation of the court including access to public trials and to the court's documentations.<sup>51</sup> Court's decisions, especially for those cases considered as "severe and complicated cases" would be delivered follow a strict procedure of "Cooperation Norms" between the Communist Party's Department of Home Affairs and the Communist Party's Department of Civil Affairs of the Supreme Court.<sup>52</sup>

### **Recommendations:**

- Take actions on legal reform and in practice immediately abolish at all levels the exercise of outdoor trials to ensure the right to presumption of innocence, effective legal representation, and fair trials for defendants.
- Ensure fair trial for all defendants, including those who are tried for crimes under Chapter XIII of the Penal Code, and guarantee access to trials by defendants' family members and fair-trials monitoring groups.
- Enhance participation and monitoring of citizens in order to guarantee the integrity of the Judiciary.
- Amend the Penal Code to ensure that attorney-client privileges are strictly respected, and lawyers are not required to report on clients' already committed crimes at any point.
- Amend the Law on Organization of People's Court to stipulate that the administration of the judicial system and appointment of judges must be independent following the Constitution 2013.

### **D. Freedom of expression**

- 12.** Unimplemented recommendations on revision of the legal framework to ensure freedom of expression. Viet Nam has accepted 24 recommendations in 2014 regarding the protection and promotion of freedom of expression,<sup>53</sup> of which five recommendations suggested specific actions including a revision of the Penal Code, in particular Article 79, 88 and 258 of the Penal Code 2009,<sup>54</sup> and four others suggested the revision of Decree 72<sup>55</sup> and Decree 174<sup>56</sup> on the management of internet.<sup>57</sup> The revision of the Penal Code in 2015 and 2018 however re-introduced provisions under Article 79, 88, and 258 to Article 109, 117 and 331 of the new Code, respectively. These provisions now are coded with a lighter sentence, and Article 117 on propaganda against the state now prescribed crime to keep information against the state and added para.3 on preparation to conduct

the act of offense. To date, Decree 174 prevail. Decree 72 was revised by Decree No. 27/2018/NĐ-CP on 01/3/2018, however the revision did not respond to accepted UPR recommendations. Instead, the revised Decree 27/2018 introduced new provisions on using filter and the removal of information violated Article 5 para.1 of Decree 72 and stricter requirements of user registrations and data retention of social media users. In addition, the introduction of the Law of Cybersecurities<sup>58</sup> in 2018 added major concerns to a more restricted environment for expression on the internet.

**Recommendations:**

- Affirm Viet Nam’s commitments on improving the legal framework to ensure freedom of expression, in particularly through revision of the Penal Code 2015, Decree 174/2013, Decree 72/2013 and Decree 27/2018, and the Law on Cybersecurities 2018 to make restrictions of freedom of expression in these instruments inline with international standards.
- Positively respond to the request for country visit by the Special Rapporteur on freedom of opinion and expression.

**13. Freedom of press.**<sup>59</sup> The Press Law revised in 2016 introduced a mechanism for state media to collaborate with private sector.<sup>60</sup> However it does not explicitly recognise private-owned press.<sup>61</sup> Private media and newspapers were commonly viewed as a threat to the national media and should be prevented.<sup>62</sup> The privatisation of state-own enterprises allowed a few exceptions for the private sector involvement in the establishment of new media,<sup>63</sup> however these outlets were eventually transferred back to the management of the Ministry of Information and Communication (MOIC). The Press Law 2016 also allows news agencies to appoint their own editor-in-chief, however such appointment only takes effect with an approval by the MOIC, which would follow an acceptance from the Department of Propaganda and Education of the Communist Party.<sup>64</sup> The Department of Propaganda and Education provides directions for the management and control of media through a rigorous framework.<sup>65</sup> The Press Law provides that no pre-publishing content censorship procedure applied,<sup>66</sup> in fact the Department – at the national and provincial level has advisory note to the media on what contents should or should not be published during its monthly, weekly or special meetings with media.<sup>67</sup>

**Recommendations**

- Immediately provide a legal framework for the creation and operation of independent and private media following Article 19 ICCPR.
- Develop strong measures to protect reporters from all forms of discriminations and violence; and respect their freedom of association.

**14. Access to information.** A Law on Access to information was adopted in 2016,<sup>68</sup> responding to recommendations from different UN mechanisms<sup>69</sup> and Canada’s recommendation in 2009.<sup>70</sup> The law contains several short-comings in realising principles of non-discrimination and maximum disclosure, including (i) narrow definition of access to information;<sup>71</sup> (ii) limited scope of obligation to disclosure of information,<sup>72</sup> (iii) children and foreigners have limited access to information<sup>73</sup> and no measures to ensure access by illiterate people and people deprived of freedom; (iv) complicated procedure to conduct a request of information;<sup>74</sup> (v) broad exceptions in undisclosure information;<sup>75</sup> and (v) lack of an independent body to monitor the implementation of the Law and receive complaints. RTI graded the law at 68/150 points and ranked 90th/112 national legislation on access to information.<sup>76</sup> In practice, a survey showed more than 70% respondents viewed the refusal of requests of information a common or prevalent problem.<sup>77</sup> In 2017, only 9,3% respondents to PAPI knew the Law on Access to information as an instrument to request for information, instead, people would seek information through a known contact in the government (40%) and personal contacts (33%).<sup>78</sup> Key barriers of access to information named in a study by PPWG included unfriendly

attitudes from civil servants, the request-holders had to come to the relevant public organ several times to get their request fulfilled, inadequate language and information, and refusal of requests or cost of the request was higher than expected.<sup>79</sup> People of ethnic minorities, people with disabilities, children, people deprived of freedom are among the most disadvantaged groups in terms of access to information.<sup>80</sup> 71% male respondents and 74% female respondents of the PPWG' survey did not consider filing a complaint on access to information as they were not informed about complaint mechanism, lack of confidence in the authorities which handle complaints, and concerns about cost of legal services.<sup>81</sup>

**Recommendations:**

- Amend the Law on Access to Information to be in line with Article 19 ICCPR and international standards.
- Invest more on the development of user-friendly online portals to meet the diverse needs of people.
- Ensure that the Law on the Protection of State Secrets inline with international standards and good practices to promote the right to information.
- Consider the establishment of a national mechanism to protect and promote the right to know following international recognised good practices.

**E. Fair election.**

15. To qualify as a candidate for election, a person would need to fulfil fixed criteria which may result in indirect discrimination against youth, people with disabilities and people of different opinions.<sup>82</sup> The National Election Council is not independent.<sup>83</sup> The process of candidacy negotiation for a final list of qualified candidates, and for candidates to run election campaigns are restricted and unfair for independent candidates.<sup>84</sup> Proxy voting is forbidden<sup>85</sup> yet a common practice, which not only affected the result of a fair election but also impaired the right to vote, especially of women.<sup>86</sup> Ballot counting is done with witnesses but not in open public,<sup>87</sup> and preliminary results of election at grassroot level are not announced immediately after the ballot counting.<sup>88</sup>

**Recommendations:**

- Initiate a legal and social reform to ensure free and fair election, especially through allowing voters to directly nominate their candidates.
- Take strong measures to end proxy voting, including the requirement of showing Identification Document in addition to voter registration.
- Conduct ballots counting in public and immediately announce the preliminary result after the counting.

**F. Freedom of Association**

16. No progress on legal reform for freedom of association was achieved. Besides recommendations from CRC (2012)<sup>89</sup> and the Special Rapporteur on freedom of religions or beliefs (2015),<sup>90</sup> Viet Nam has accepted seven recommendations in 2014 on freedom of association,<sup>91</sup> including one on “promoting a legal, administrative and fiscal framework in which such institutions can be created and developed and perform their activities without any obstacles and with freedom of expression.”<sup>92</sup> However, no progress to respond to these recommendations was observed. Decree 45/2010/ND-CP, with several un-due restrictions<sup>93</sup> and incompatible with the recognition of freedom of association in the Constitution 2013, is still in effect. The existing framework contains several discriminatory elements: Those political-social associations<sup>94</sup> and “specialised associations”<sup>95</sup> were guaranteed with a clear legal framework and budget from the government for their operation,<sup>96</sup> which would constitute positive discrimination against other forms of associations. Decree 45/2010

imposed criteria for the appointment of the leader of an association, including a condition of good health<sup>97</sup> which may directly exclude people with disabilities or patients to form and lead their own associations.<sup>98</sup> Other sub-law process, such as the revision of Decree 93/2009<sup>99</sup> introduced stricter conditions and control on the approval of partnership projects, activities and funding related to international NGOs. The Law on Association in pending for the last 20 years, again was postponed in 2016 at a controversial draft including most of existing restrictions. Within this narrow framework, the exercise of association was hindered significantly.<sup>100</sup> The Justice Index showed a percentage of people who consider having freedom of association realised dropped from 71,8% in 2012 to 60,2% in 2015.<sup>101</sup>

### **Recommendations**

- Take concrete steps to implement Viet Nam’s commitment on freedom of association, including **(R) promoting a legal, administrative and fiscal framework in which non-profit institutions can be created and developed and perform their activities without any obstacles and with freedom of expression.**
  - Ensure that the Law on Association will be developed and adopted timely, taking into account recommendations from UN Treaty bodies, the Special Rapporteur on Freedom of Association and Assembly, and the UPR process.
  - Positively respond to the request for the country visit of the Special Rapporteur on Freedom of Association and Assembly before 2021.
17. The right of workers to freely form and join trade union are not recognised properly in the Constitution 2013<sup>102</sup> and the Law on Trade Union.<sup>103</sup> The right to form or join trade union was coded in the Law on Trade Union,<sup>104</sup> however such act would have to conform with the Charter of Viet Nameese Trade Union.<sup>105</sup> As a result, workers could only join the existing system of the Viet Nam General Confederation of Labour or form a new chapter under the Union but not their own union of their free will. In addition, it is noted that in many cases, the leaders of trade union at the grassroots level were also high-level managers in the enterprises.<sup>106</sup>

**Recommendation:** Allow employees to freely form or join independent trade union of their choice.

## **F. Freedom of Assembly**

18. Viet Nam has accepted five recommendations on freedom of peaceful assembly in 2014, most notably a recommendation from Australia to “Enact laws to provide for and regulate freedom of assembly and peaceful demonstration in line with ICCPR”.<sup>107</sup> Viet Nam “noted that States had the responsibility to protect all rights, including the right to peaceful assembly. It took note of the recommendations to manage assemblies and saw it as a useful reference.”<sup>108</sup> However, to date, the right to peaceful assembly was severely restricted. The assembly of more than five people in public would need a permission following Decree 38/2005/NĐ-CP dated 18/3/2005 on measures to maintain public order.<sup>109</sup> Not only demonstrations in public were restricted, by the prevailing Decision 76/2010/QĐ-Ttg dated 30/11/2010, meetings and gathering events such as workshops or conference with “international elements”<sup>110</sup> for a number of subjects including human rights would need to acquire approvals from at least two ministries<sup>111</sup> and a final approval by the Prime Minister. A draft Law on Demonstration was assigned to the MPS for preparation, however the draft had been discussed in discretion and unavailable for the public.
19. Anecdotal information, testimonies and photos from self-identified peaceful protestors showed that they have experienced arbitrary arrests, detention and abuse by security forces, including plain-clothes forces<sup>112</sup> especially at protests during summer 2016 and 2018.<sup>113</sup>

### **Recommendations:**

- Give effect to Article 25 of the Constitution 2013 through introducing a legal framework to enable individuals and groups to exercise their rights to freedom of peaceful assembly as a positive follow-up to the Human Rights Council Resolution 31/37.<sup>114</sup> Immediately revoke Decision 76/2010/QD-Ttg. Timely introduce a Law on Demonstration inline with international standards and good practices of management of demonstration as suggested by the Special Rapporteur on Freedom of Association and Assembly.
- Encourage civil organisation to conduct monitoring of peaceful demonstrations.
- Investigate allegations on the excessive use of force in managing demonstrations and protests; provide guidelines on managing peaceful protests to the public, police force and media.
- **(R) Extend an invitation to the Special Rapporteur on Freedom of Association and Assembly for a country visit.**

## G. Education

20. In 2014, Viet Nam has accepted one recommendation on “ensuring education free of charge in practice”.<sup>115</sup>The Constitution 2013 and The Law on Education provides that public elementary education is compulsory and tuition-free.<sup>116</sup> Despite that almost 20% of the government’s budget was spent for education, agovernment’ survey in 2015-2016 reported that households spent about 30% of their expenses on education for their children.<sup>117</sup> Costs of schooling subjected to families’ contribution included several types of fees.<sup>118</sup> Despite an increase financial support for poor households, schooling expenses continues to be a great challenge to the realisation of universal education, and particularly affected children from households living close to the povety line who were not qualified for support.
21. Viet Nam accepted 14 recommendations on improving access and quality of education and addressing inequality in education.<sup>119</sup> However, recent studies suggested that girls, ethnic minorities and the poorest continued to be disproportionately excluded and under-served. Secondary enrolment rates are over 65 percent among majorities and advantaged groups of the Kinh and Hoa (Chinese Viet Namese), but fall to as little as 13.7 percent for other ethnic minorities groups.<sup>120</sup>Ethnic minority girls are substantially less likely than boys to continue on to secondary school, college and university.<sup>121</sup>
22. A number of restrictions in regulations on student affairs might have negative impact on the exercise of rights by students in and outside of their schools, in particular in terms of freedom of expression, freedom of assembly and freedom of religions,<sup>122</sup> and the right to vote.<sup>123</sup>

### Recommendations:

- (R) Ensure elementary and secondary education free of charge in practice; Introduce measures to ensure transparency in educational investment from the national to school level, especially through public accountability mechanism and empowering the role of parents’ associations.
- Ensure quality of education through increasing invesment on teacher training and school management training, resources and materials.
- Review human rights impacts of the “socialisation” policy of public services<sup>124</sup> and introduce measures to detect and address discriminatory practices in the public services, including education, health care and public transportation.
- Move forward to expand successful mother-tongue and bi-lingual education programs for ethnic minorities.
- Ensure the legal framework for the management of educational institutions is conducive to the enjoyment and exercise of human rights by students and teachers. Revise the Law on



Education, the Law on Higher Education 2012 and other Circulars to ensure these instruments do not infringe the rights of students.

## H. The right to land

23. A progress in implementing the accepted recommendation on ensuring land entitlement for women<sup>125</sup> has been achieved: the gap in having names on land use right certificates between men and women dropped significantly from 18% (2016) to 9%(2017).<sup>126</sup> However, it is noted that the percentage of men who did not have land use right certificate because their spouse's name was on the certificate is significantly lower: 1.18% (in 2016) and 1.76% (in 2017) respectively.
24. **Land acquisition, eviction and displacement.**<sup>127</sup> From 1980, individual's land ownership was no longer legally recognised.<sup>128</sup> According to PAPI-2017,<sup>129</sup>one per every 14 Viet Nameese people experienced land acquisition.<sup>130</sup> The percentage of people who felt a fair compensation for their taken land dropped from 36%(2014) to only 21%(2017). People from ethnic minorities could be more vulnerable in land acquisition as showned in 2016, 26% ethnic minority respondents experienced landloss said they received no compensation, compared with a 15% of majority Kinh respondents. Together with a lack of transparency in land-use planning and land acquisition, unfair compensation made land disputes a raising problem.<sup>131</sup>The Land Law 2013 Article 62 provides that the Government could take land for social-economic development as for public interest, including also real estate and mining projects.<sup>132</sup>by private sectors. Reported cases showed evictions conducted before disputes were resolved lawfully,<sup>133</sup>including evictions of religious properties.<sup>134</sup>
25. **Unfair allocation of forest land.** A number of regulations on forest land allocation to households were introduced since 1994,<sup>135</sup> including allocation of forest land to communities. A report from the Ethnic Council of the National Assembly suggested that by 2016, the implementation of the policy on forest land allocation to households and communities has resulted in an allocation of 1,128,096 ha forest for communities and 2,930,059 ha forest for households. However the forest allocated to ethnic minorities, as noted in the report, were mostly forest with low productivity in scattered areas and rocky mountains.<sup>136</sup> The forest land allocated to households and communities was very limited comparing to those area managed by forest state enterprises,<sup>137</sup> and a North – South disparity seemed to exist in the implementation of the land allocation policy. Expert also noted an insignificant statistic on land and forest allocated to communities as spiritual/co-management.<sup>138</sup>

### **Recommendations:**

- Recognise the right to own land by individuals and organisations.
- Revise the Land Law 2013 to refrain from land acquisition by the government for real estate and economic development projects.
- Consider the adoption and application of the UN's Basic Principles and Guidelines on Development-Based Evictions and Displacement.<sup>139</sup> Ensure its obligations following the UN Guiding Principles on Business and Human Rights are fully realised, in particular through an introduction of a National Action Plan.
- Further its effort in the recognition of forest and land use rights and customary rights, including collective and spiritual land, to ethnic minorities; ensure their rights to land, cultures and their right to development.

## III- Situation of groups

### **LGBTI people**

26. Recognition of same-sex marriage. The revised Law on Marriage and Family (2014) has removed the prohibition on marriage between people of same sex.<sup>140</sup> However, it provides that "the State shall not recognise marriage between persons of the same sex".<sup>141</sup> Same-sex couples in actual cohabitation are

not acknowledged and protected before the law. The enjoyment of rights arising from their actual cohabitation is not guaranteed as same as persons' in heterosexual marriage, such as ownership of common properties, right to representation, rights and obligations between parents and children, right to inheritance and right to request settlement of divorce.

27. The Civil Code revised in 2015 has legalised the right to sex reassignment in Article 37.<sup>142</sup> However, a legal process for sex-reassignment needs to be in place for the provision to take effect. A draft Law on Sex Reassignment was drafted by the Ministry of Health but not foreseen to be included in the working program of the National Assembly in the near future.<sup>143</sup> Without access to sex-reassignment, according to a study in 2015, 37% of transgender women and 64.3% of transgender men in the study experienced rejection, harassment, humiliation when they perform procedures which require showing identification documents with name and gender. In a larger context, LGBT people faced different forms of discriminations across sectors, most notably in education, health care and employment.<sup>144</sup>

**Recommendations:**

- Move forward to legalise same-sex marriage before 2023.
- Timely adopt a law on sex-reassignment to give effect to the recognition of the right to sex-reassignment in the Civil Code 2015.
- (R)Take steps to implement Chile's recommendation in 2014 to introduce a comprehensive law on anti-discrimination, including discrimination on gender identity and sexual orientation.
- Continue to raise awareness by civil servants and the public to combat discrimination, especially in public services.

28. **Access to public transportation and space by people with disabilities.**<sup>145</sup>In 2012, the Government has issued a scheme for assisting the disabled in the 2012-2020,<sup>146</sup>with specific targets towards ensuring access to public transportation by 80% people with disabilities respectively, and 100% public buildings and offices are accessible for people with disabilities. However, the implementation of the scheme in the transportation and construction sector was rather slow, with an action plan was developed in the end of 2016 and a review of the access to transport infrastructure was conducted in 2017.<sup>147</sup> Testimonies from people with disabilities<sup>148</sup> showed that it is still extremely difficult for them to access and use public transportation, and that accommodations introduced in the scheme was mostly pilot and show-cases than a proper coverage.

**Recommendations:**

- Review the progress of implementing the Scheme of assistance for people with disabilities and take actions to achieve its targets.
- Make a monitoring and complaint mechanism for equal access to transportation and public building available for the public, especially for people with disabilities.
- Provide an enabling environment for the establishment and operation of people with disabilities' organisations and their involvement in monitoring the implementation of policies for inclusion.

29. **Human Rights Defenders.** In 2014, Vietnam accepted four recommendations regarding human rights defenders,<sup>149</sup> including one from Norway regarding giving legitimacy and recognition of human rights defenders.<sup>150</sup> At the Human Rights Council, the country "recognized the importance and lawful role of organs of society in the promotion and protection of human rights and agreed that primarily, States should take measures to protect them".<sup>151</sup> However, at the domestic level, no such official recognition has been made to human rights defenders. Instead, a weak and vague legal framework might create confusion between the exercise of fundamental freedoms including freedom of speech, expression, association, assembly and the right to take part in the public life and activities of human rights protection with illegal acts.<sup>152</sup> In particular, despite having accepted five

recommendations on the revision of the Penal Code to be in line with international human rights standards,<sup>153</sup> the Penal Code 2015 maintains those provisions.<sup>154</sup> From 2014, at least 29 people were convicted by article 88 and five people were charged following article 258 of the Penal Code 2009.<sup>155</sup> A restricted legal framework such as Decision 76/2010/QG-Ttg requires in-door meetings such as conference or training involving international experts to acquire approval from the Prime Minister created un-due burdens for human rights defenders to conduct their activities.

### **Recommendations**

- (R) Take steps to implement recommendation No.143.34 by Norway from the 2nd UPR.
- Revise ambiguous provisions in Article 117 and 331 of the Penal Code 2015, which may affect the exercise of recognised fundamental freedoms; Timely adopt a Law on Association and a Law on Demonstration which are in line with relevant international standards and reflect Vietnam's commitment at the Human Rights Council; Revise Decree 93/2009/ND-CP and Decision 76/2010/QD-Ttg to ensure an enabling environment for organisations and groups to conduct their activities on human rights promotion and protection.
- Extend an invitation to the Special Rapporteur on Situations of Human Rights Defender for a country visit to Vietnam.

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<sup>1</sup> The ratification is in line with a full implementation of those recommendations: in 2014 by Kazakhstan (143.9), Denmark (143.10), Belgium (143.11), Gabon, Mali, Slovakia and Togo (143.12), Poland and Switzerland (143.13), USA (143.14), partly implemented recommendations from France, Austria, Czech and Uruguay (143.15). (Number of recommendations are from UN Document No. A/HRC/26/6 and A/HRC/26/6/Add.1); This is also a full implementation of recommendations in 2009 from Algeria, Australia, Chile and Sweden.

<sup>2</sup> Two human rights conventions which Viet Nam has not signed are the CMW - International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and CED- the Convention for the Protection of All Persons from Enforced Disappearance.

<sup>3</sup> This is to repeat recommendation No. 143.17 by Gabon and No.143.24 by Slovenia in 2014. (UN Document No. A/HRC/26/6 and A/HRC/26/6/Add.1).

<sup>4</sup> This is a repeated recommendation following those No.143.1 by Albania, Azerbaijan, Nicaragua and Niger, No.143.6 by Portugal and Uruguay, No. 143.8 by Portugal, 143.15 by Czech and Portugal, No.143.16 by Thailand, No.143.30 by Tunisia, No.143.104 by Estonia in the second UPR in 2014. UN Document No. A/HRC/26/6 and A/HRC/26/6/Add.1

<sup>5</sup> Visits of the Special Rapporteur on Freedom of Religions or Beliefs (July 2014) and the Special Rapporteur on the Right to Food (November 2017).

<sup>6</sup> Including: SR on extrajudicial, summary or arbitrary executions, WG on business enterprises, SR on sale of children, SR on Torture, SR on slavery, SR on education, SR on toxic waste, SR on rights to water and sanitation, SR on disability, SR on freedom of expression, SR on HR defenders, SR on migrants, SR on freedom of assembly, WG on arbitrary detention. [https://spinternet.ohchr.org/\\_Layouts/SpecialProceduresInternet/ViewCountryVisits.aspx?Lang=en&country=VNM](https://spinternet.ohchr.org/_Layouts/SpecialProceduresInternet/ViewCountryVisits.aspx?Lang=en&country=VNM)

<sup>7</sup> Including its voluntary commitment as a candidate of the UN Human Rights Council to consider such establishment of an NHRI; the acceptance of two UPR recommendations in 2014 (Accepted recommendation 143.39 by Niger in the 2nd UPR in 2014: "Establish an independent national human rights institution". Accepted recommendation No.

143.38 from Morocco: “Establish a national institution for the promotion and the protection of human rights”.); Viet Nam also has an oral commitment with CERD in 2012: “The Committee regrets the overall absence of concrete actions and time frames for the establishment of a national human rights institution in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles). It also notes with appreciation the oral commitment made by the delegation to actively consider the establishment of such institution in the near future (arts. 2 and 6)”. CERD/C/VNM/CO/10-14 (CERD, 2012), para.11.

<sup>8</sup> Other relevant accepted recommendations on achieving progress towards the establishment of an NHRI following the Paris Principles, including recommendations No. 143.36 from Indonesia, No.143.37 from Thailand, and No. 143.42 from Tunisia; noted recommendations No.143.40 from Spain and Portugal, No.143.41 from Congo, France, Madagascar, Togo, No. (UN Document No. A/HRC/26/6 and A/HRC/26/6/Add.1); (not supported) UPR Recommendations from Mexico, Azerbaijan, New Zealand, Germany, and France in 2009 (A/HRC/12/11). It is also concerns and recommendations by treaty bodies: the Committee on Economic, Social and Cultural Rights (E/C.12/VNM/CO/2-4, 2014.); the Committee on Elimination of Racial Discrimination (CERD/C/VNM/CO/10-14 (CERD, 2012), para.11), the Committee on the Rights of the Child (CRC/C/VNM/CO/3-4 (CRC, 2012), para.16); by special procedures including the Independent Expert on minorities issues during her country visit in 2011 (A/HRC/16/45/Add.2 (IE Minorities, 2011), the Independent expert on the effects of economic reform policies and foreign debt on the full enjoyment of all human rights, particularly economic, social and cultural rights in 2012 (A/HRC/20/23/Add.1), the Special Rapporteur on extreme poverty and human rights in 2011 (A/HRC/17/34/Add.1).

<sup>9</sup> Established by Decision No.1717/QĐ-TTg dated 06/10/2015.

<sup>10</sup> Established by Decision No. 856/QĐ-TTg on 15/06/2017.

<sup>11</sup> This body is led by the Prime Minister, has an inter-agencies structure from the national to the district level. At the provincial level, these steering committees were often named “Steering Committee on Protection and Struggle on human rights” (Ban chỉ đạo công tác bảo vệ và đấu tranh nhân quyền) as stated in several decisions of establishment of such organs at the provincial, city and district level.

<sup>12</sup> A Major General of the Ministry of Public Securities acts as the Director of the Permanent Office of the Government’s Steering Committee on Human Rights and the Office operates as a unit within the Ministry of Public Securities.

<sup>13</sup> As stipulated in the respective decisions to establish the body. The decision to establish the Government’s Steering Committee on Human Rights and its Permanent Office under the Ministry of Public Securities (presumably Decision No. 63/2004/QĐ – TTg dated 16/4/2004) is not found published in the Government’s portal of official documents.

<sup>14</sup> This is to repeat recommendations No.143.40 by Portugal and Spain, 143.41 by Congo, Pháp, Madagascar, Togo in 2014, and rejected recommendations from Azerbaijan, Brazil, Germany, New Zealand, France, Mexico in 2009;

<sup>15</sup> The implementation of the UPR recommendations in 2014 was directed by a national master plan promulgated by the Prime Minister’s Decision No.2057/QĐ-Ttg on 23/11/2015 (a copy of the decision could be found at <https://thuvienphapluat.vn/van-ban/Quy-en-dan-su/Quy-et-dinh-2057-QĐ-TTg-thuc-hien-khuyen-nghi-Viet-Nam-chap-thuan-theo-Co-che-ra-soat-dinh-ky-pho-quat-chu-ky-2-296205.aspx> ). Respectively, the Concluding Observation by the Committee on the Rights of the Child (2012) was followed up with an action plan by the Prime Minister’s Decision No.535/QĐ-Ttg on 14/4/2014 (a copy of the decision could be found at <https://thuvienphapluat.vn/van-ban/Quy-en-dan-su/Quy-et-dinh-535-QĐ-TTg-nam-2014-thuc-hien-Khuyen-nghi-Uy-ban-ve-quyen-tre-em-Lien-hop-quoc-226290.aspx> ); the Concluding Observation by the CEDAW Committee (2015) was implemented through the Prime Minister’s Decision No.668/QĐ-Ttg on 16/5/2017 (a copy of the decision could be found at <https://thuvienphapluat.vn/van-ban/Van-hoa-Xa-hoi/Quy-et-dinh-668-QĐ-TTg-2017-thuc-hien-khuyen-nghi-Uy-ban-xoa-bo-phan-biet-doi-xu-voi-phu-nu-349332.aspx>); There was no action plan yet for the concluding observation by the CESCR in 2014.

<sup>16</sup> dated 17/10/2010 by the Secretariat of the Communist Party on human rights work in the new period

<sup>17</sup> dated 14/3/2011 on the Action Plan to implement Directive 44.

<sup>18</sup> Following Decision 1309/QĐ-TTg on 05/9/2017 on the approval of the project Introducing human rights content in the national school system. Accessed at <https://luatVietNam.vn/giao-duc/quyet-dinh-1309-qd-ttg-thu-tuong-chinh-phu-116799-d1.html> 30/6/2018.

<sup>19</sup> No.143.59 (Egypt) and 143.62 (Belarus), UN Document No. A/HRC/26/6 and A/HRC/26/6/Add.1.

<sup>20</sup> Recommendations No.143.53 (People Republic of Korea), 143.60 (Uzbekistan), 143.61 (Venezuela), 143.63 (Djibouti), 143.167 (Tunisia), 143.227 (Turkmenistan). UN Document No. A/HRC/26/6 and A/HRC/26/6/Add.1.

<sup>21</sup> For instance, a training on human rights involving international speakers, participants or funding would be considered falling into the scope of Decision 76/2010/QĐ-TTg which requires approval from at least two ministries (Ministry of Foreign Affairs and Ministry of Public Securities) and a final approval from the Prime Minister, in addition to a pre-approval by the agency which the NGO/organisation belong to as no independent NGO exists in Viet Nam.

<sup>22</sup> Recommendations No.143.17 (Gabon), No.143.83 (Leichenstein), No.143.84 (Slovenia), No.143.86 (Serbia), No.143.87(Netherlands), No.143.88 (Chile) No.143.206 (Libya), No.143.207 (Argentina), No.143.211 (Republic of Congo). (UN Document No. A/HRC/26/6 and A/HRC/26/6/Add.1).

<sup>23</sup> Recommendations No.143.88 (Chile) and 143.211 (Republic of Congo). (UN Document No. A/HRC/26/6 and A/HRC/26/6/Add.1).

<sup>24</sup> E/C.12/VNM/CO/204 (CESCR, 2014).

<sup>25</sup> Such as the Law on Gender Equality, the Labour Code or the Law on Education. Law on Access to Information, Law on Children. However prohibited grounds for discrimination were often listed as a limited exhaustive list, missing important grounds such as political opinion, social origin or sexual orientation.

<sup>26</sup> Nguyễn Thị Phương Thanh. Pháp luật về phòng, chống phân biệt đối xử ở Việt Nam hiện nay. Tạp chí Dân chủ và Pháp luật. 25/8/2015 Accessed at <http://tcdpl.moj.gov.vn/qt/tintuc/Pages/xay-dung-phap-luat.aspx?ItemID=166> on 05/7/2018.

<sup>27</sup> Committee on the Elimination of Racial Discrimination.2012. Concluding observation. CERD/C/VNM/CO/10-14 (CERD, 2012) para.(a): “Assess the reasons for the low number of complaints relating to racial discrimination, including whether it may be due to victims’ lack of awareness of their rights, language barriers, fear of reprisals, limited access to available mechanisms, or the authorities’ lack of attention or sensitivity to cases of racial discrimination”.

<sup>28</sup> Recommendations No.143.89 by Belgium, No.143.90 by Namibia, No.143.92 by Switzerland, No.143.94 by Italy (UN Document No. A/HRC/26/6 and A/HRC/26/6/Add.1).

<sup>29</sup> Recommendation No. 143.95 by New Zealand (UN Document No. A/HRC/26/6 and A/HRC/26/6/Add.1).

<sup>30</sup> Recommendations No. 143.92 by Switzerland and 143.94 by Italy, recommendation No.143.103 by Australia (UN Document No. A/HRC/26/6 and A/HRC/26/6/Add.1).

<sup>31</sup> Death penalty was removed from one economic crime (produce and trading of : Death penalty was removed from one economic crime (produce and trading of: fake food and food additives products), two drugs related crimes (illegally drug possession and drug appropriation), two non-violence crimes (opposing order and surrendering to the enemy) and two violence related crimes (destruction of projects of national security importance and robbery).

<sup>32</sup> Vietnam maintains the capital punishment for 18 crimes, including eight non-violent crimes, which are: Carrying out activities aimed at overthrowing the people’s administration (Article 109); Spying (Article 110); Manufacturing and/or trading of fake goods such as cuative medicines or preventive medicines (Article 194); Illegally producing narcotics (Article 248); Illegally transporting narcotics (Article 250); Illegally trading in or appropriating narcotics (Article 251); Embezzling property (Article 353); Receiving bribes (Article 354). The 10 other crimes punishable by death include: High treason (Article 108); Rebellion (Article 112); Terrorist activities aimed at opposing the people’s administration (Article 113); Sabotaging the material-technical foundations of the Socialist Republic of Vietnam (Article 114); Murder (Article 123); Rape against a minor under the age of 16 (Article 142); Terrorism (Article 299);

Undermining peace, provoking wars of aggression (Article 421); Crimes against humanity (Article 422); War crimes (Article 423).

<sup>33</sup>Viet Nameese officials interpreted that international law and ICCPR do not require the abolishment of the death penalty, that the death penalty is still considered as an effective deterrence measure to combat increasingly complicated and dangerous crimes. It committed that “when conditions so allows, we will consider ratifying the second optional protocol to the ICCPR”. Human Rights Council. Twelfth session, Agenda item 6. Report of the Working Group on the Universal Periodic Review: Viet Nam. Addendum Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review. UN Document A/HRC/12/11/Add.1 16 September 2009. Para. 20 and 21. Accessed on 30/6/2018 at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G09/155/77/PDF/G0915577.pdf?OpenElement>. On the view of death penalty, the Explanatory Note to the revision of the Penal Code 2015 stated a clear policy on the reduce of the scope of application of the capital punishment through these measures: “giảm bớt số tội danh có hình phạt tử hình; quy định điều kiện chặt chẽ nhằm hạn chế các trường hợp áp dụng hình phạt tử hình và mở rộng hơn đối tượng bị kết án tử hình nhưng không phải thi hành án tử hình nhằm thể hiện rõ sự khoan hồng, nhân đạo của Nhà nước ta.”[] Accessed at [http://duthaonline.quochoi.vn/DuThao/Lists/DT\\_DUTHAO\\_LUAT/View\\_Detail.aspx?ItemID=526&TabIndex=2&TàiLieuID=1959](http://duthaonline.quochoi.vn/DuThao/Lists/DT_DUTHAO_LUAT/View_Detail.aspx?ItemID=526&TabIndex=2&TàiLieuID=1959) on 10/7/2018.

<sup>34</sup> Viet Nam has accepted a recommendation from Switzerland in 2009 to “revise its legislation on the death penalty bearing in mind existing international standards on the subject, especially concerning transparency” (no.32).

<sup>35</sup> Lê Văn Cẩm, Nguyễn Thị Lan. 2014. Hình phạt tử hình trong pháp luật hình sự Việt Nam: Giữ nguyên hay cần giảm và tiến tới loại bỏ (?).[Death Penalty in the Penal Law on Vietnam: maintaining the status quo or reduce the application towards abolition (?)] Tạp chí Khoa học ĐHQGHN: Luật học,[National University’s Sciences Review: Law] Vol. 30, Issue No. 3 (2014) 1- 14, page 6. Accessed on 30/6/2018 at <https://js.vnu.edu.vn/LS/article/view/477/453>

<sup>36</sup>Ministry of Public Security. 2017 Report on Five-year Implementation of the Penal Procedure Code in People’s Public Securities (2011 - 2016), No. 05 / BC-BCA-C81, dated 04/01/2017. Section 3.2 Execution of Death Penalty, page 11. According to this report, the number of people on death row before June 30, 2011 was 336; The number between July 1, 2011 to June 30, 2016 is 1,134; there has been a reduction of 789 cases after the period (including 429 executed, 179 cases pardoned by the state president to life sentence, 65 cases where the Court of Appeal ruled for life sentence and 21 years, 80 cases re-investigated and 36 deaths). As of July 1, 2016, there were 681 people in the death row. See also La Hồng. “Hơn 1.000 trường hợp bị tuyên tử hình trong vòng ba năm”[More than 1,000 cases were convicted with death penalty in three years]. Published on 09/02/2017, accessed on 10/7/2018 at <https://vietnammoi.vn/hon-1000-truo-ng-ho-p-bi-tuyen-tu-hinh-trong-vong-ba-nam-19733.html>

<sup>37</sup> Following Joint Circular No. 05/2013/TTLT-BCA-BQP- BYT-TANDTC-VKSNDTC dated 06/6/2013 on the Conduct of execution by lethal injection.

<sup>38</sup> This decree replaced Decree 82/2011/ND-CP when it was not possible to purchase lethal injection drugs for execution.

<sup>39</sup> Prevailing regulations on the treatment of persons sentenced to death are stipulated in Circular 39/2012 / TT-BCA which regulates the management of the detention of the convicted persons. Ordinary inmates can meet their siblings, spouses; Aunts, uncles, nephews and nieces; but those who are on death row are not. There is no provision allowing the person on death row to meet with organizations or individuals other than relatives, contact the outside world by telephone while ordinary prisoners are permitted to do so. Inmates on death row may only send and receive letters if permitted by the supervisors of the detention camp. According to the provisions of this circular, an inmate on death row is allowed to meet his /her family once a month and no more than one hour each time, receive gifts from family twice a month. Those who are considered to have “symtoms of suicide, rebel, escaping from detention camp or other dangerous behavior” may be subjected to shackles 24 hours a day, having their shackles removed once a day for 15 minutes, and can switch legs at least once in a week. (Comparing between the prevailing Clause 1, Article 4 of Circular No. 07/2018 / TT-BCA stipulates that offenders meet their families; receive, send mail;

receiving money, objects and telephone contact with their families, and the prevailing Clause 2 of Article 7, Circular 39/2012 / TT-BCA, valid, regulates the management and detention of persons on death row).

<sup>40</sup> This recommendation repeats recommendation No. 143.108 by Belgium in 2014, which was not accepted (UN Document No. A/HRC/26/6 and A/HRC/26/6/Add.1).

<sup>41</sup> Repeat and re-produced recommendations No.143.103 by Australia in 2014 (UN Document No. A/HRC/26/6 and A/HRC/26/6/Add.1).

<sup>42</sup> During 1<sup>st</sup> and 2<sup>nd</sup> UPR cycles, Viet Nam had received 27 recommendations related to judicial reforms and fair trials. All recommendations called for the reform of Viet Nam’s legal framework to promote rule of law, protect human rights, and secure fair and public trials. By accepting 25 out of 27 recommendations, Viet Nam has committed itself at international level to continue effectively its effort to judicial reform.

<sup>43</sup><http://daibieunhandan.vn/default.aspx?tabid=81&NewsId=383160>

<sup>44</sup><http://congly.vn/thoi-su/de-nghi-duoc-dung-thuc-hien-chi-tieu-xet-xu-luu-dong-236162.html>

<sup>45</sup><http://www.vkssoctrang.gov.vn/5-chitiettin7.html> ; <http://tcdclp.moj.gov.vn/qt/tintuc/Pages/dien-dan-cong-tac-tu-phap.aspx?ItemID=147> etc.

<sup>46</sup> For example, a very high-profile homicide case involving 3 defendants and 9 victims in 2015 was tried outside the courtroom. The trial took place within 12 hours and the verdict was issued at 7 PM of same day. See

<http://www.thanhniennews.com/society/2-sentenced-to-death-in-the-murder-of-6-family-members-57084.html>

and <http://dantri.com.vn/phap-luat/tuyen-an-tu-hinh-2-bi-cao-vu-tham-sat-o-binh-phuoc-20151217131115334.htm> (for the live commentary of the trial)

<sup>47</sup><http://VietNamnet.vn/vn/thoi-su/chinh-tri/thu-tuong-khoi-to-dung-phap-luat-xu-luu-dong-cac-vu-danh-bac-si-444508.html>

<sup>48</sup> Article 19.3 – Penal Code

<sup>49</sup> Article 103.2 – Viet Nam’s Constitution

<sup>50</sup> There is no regulation in Viet Nam’s legal system that forbids judges and people’s jurors from being politically affiliated. On the contrary, the only legally recognized political party in Viet Nam, CPV, enjoys a significant position in deciding and appointing the judicial officers. The CPV’s Politburo passed the Regulation 105-QD/TW on 19 December 2017 on the hierarchy of management, appointment of cadres, nomination of candidates for public offices (“**Regulation 105**”). According to this Regulation, the CPV shall centralize its authority to staffing and cadres appointment (Article 2.1 – Regulation 105). In practice, the Chief Judge of the Supreme People’s Court currently serves as a member of the CPV’s Secretariat. Same practice is applied at local levels, and applied for the People’s Procurators. The Law on Organization of People’s Court (Article 67.1) stipulates that having a “firm political stance” to be among key requirements to become judges in Viet Nam. No further provisions elaborate this criterion. The Joint Circular 01/2011/TTLT-TANDTC-BQP-BNV dated 20 October 2011 stipulates three criteria for judges in Viet Nam, being: “strictly comply with... the Party’s principles, policies”<sup>50</sup> (Article 1.1a), “aggressively combat against persons, or actions which may jeopardize the Party” (Article 1.1a), and “being not among the cases as set forth in... Regulation 57-QD/TW... of the Politburo on “Questions on Protecting the Party internally” (Article 1.1.e).

<sup>51</sup> Towards Transparency. 17/10/2014. Integrity in Judiciary. Accessed at

<https://towardstransparency.vn/judicial-integrity> on 10/7/2018

<sup>52</sup> Nguyễn Trí Tuệ (Senior Judge of the People’s Supreme Court). 15/02/2016. Ban cán sự đảng Tòa án nhân dân tối cao và Ban Nội chính Trung ương: Phối hợp trong xét xử các vụ án nghiêm trọng, phức tạp. [The Communist Party’s Department of Civil Affairs of The People’s Supreme Court and the Central Bureau on Home Affairs: Collaboration in the trials of serious and complicated cases.] Accessed at

<http://noichinh.vn/nghien-cuu-trao-doi/201602/ban-can-su-dang-toa-an-nhan-dan-toi-cao-va-ban-noi-chinh-trung-uong-phoi-hop-trong-xet-xu-cac-vu-an-nghiem-trong-phuc-tap-299954/> on 10/7/2018.

<sup>53</sup> Recommendations No.143.4 and 147 (Belgium), No.143.74 (Mexico), No.143.144 (Italy) , No.143.149 (Luxembourg), No.143.150 (Finland), No.143.151 and 161 (Denmark), No.143.153 (New Zealand), No.143.154 (Ireland), No.143.155 (Finland), No.143.156 (Australia), No.143.157 (Canada), No.143.158 (Braxin), No.143.159

(Estonia), No.143.160 (Czech), No.143.162 and 163 (Norway), No.143.164 (Hungary), No.143.165 (Poland), No.143.166 (Sweden), No.143.67 (Tunisia), No.143.168 (Chile), No.143.170 (Pakistan). (UN Document No. A/HRC/26/6 and A/HRC/26/6/Add.1).

<sup>54</sup> From Australia, Canada, Denmark, Finland and Sweden. (UN Document No. A/HRC/26/6 and A/HRC/26/6/Add.1).

<sup>55</sup> Decree 72/2013/ND-CP dated 15/7/2013 on the management, provision and uses of internet service and information on the internet.

<sup>56</sup> Decree 174/2013/ND-CP dated 13/11/2013 on Penalties for administrative violations against regulations on post and telecommunications, information technology and radio frequency.

<sup>57</sup> From Austria, Ireland, Finland, and New Zealand. (UN Document No. A/HRC/26/6 and A/HRC/26/6/Add.1)

<sup>58</sup> The law was adopted by the 5<sup>th</sup> session of 14<sup>th</sup> National Assembly on 12/6/2018, and was signed by the President's order on 28/6/2018. The law was adopted with a number of revision comparing to the draft available to public. To date (05/7/2018), however, the adopted text was not available in any of the online portals of official documents.

<sup>59</sup> On press law reform and guarantee of freedom of press, Viet Nam has accepted three recommendations in 2009 (from Sweden (No.47), Australia, Switzerland and Netherlands (No.48) and Republic of Korea (No.52) (A/HRC/12/11). and three other recommendations in 2014 (from Brazil (No.143.158), Estonia (No.143.159) and Norway (No.143.163) UN Document No. A/HRC/26/6 and A/HRC/26/6/Add.1)

<sup>60</sup> Law on Press No.103/2016/QH13 dated 05/4/2016. Article 37.

<sup>61</sup> Article 14 of the Press Law 2016 technically allows interpretation that religious organisations a newspaper, and private university and private hospitals at the provincial level could establish an academic journal, in addition to state agencies and the Communist Party's organisations, which meant a very narrow platform for the private sector.

<sup>62</sup> On October 11, 2006, the Politburo issued Statement 41 concluded on strengthening the Communist Party's leadership with journalism, which affirmed the role of the press in order to prevent privatization of press, adjust associated activities in order to prevent the participation of private sector in the press. Instruction No. 37/2006 / CT-TTg dated November 29, 2006 of the Prime Minister continued to strongly affirm this spirit: "Maintain resolution to ensure no privatization in the media in any form" Clause 2 Directive No. 37/2006 / CT-TTg dated 29/11/2006 on the implementation of the Politburo's conclusions on a number of measures to strengthen the leadership and management of the media. In 2015, former Minister of Information and Communications Nguyen Bac Son once again reiterated the Politburo's Statement No. 41 dated 11/10/2016 and reaffirmed that "step by step separate press activities from the business, bring the media back to the state and enterprises can have activities associated with the press" (Thu Hang. 1/4/2015. Affiliate TV: Leave no space for privatization. Vietnamnet.vn. Please visit <http://vietnamnet.vn/en/thai-su/truyen-hinh-lien-ket-khong-de-tu-nhan-nup-bong-229934.html> at 17:33 on 10/5/2018 .) Most of the members of the Standing Committee of the National Assembly simultaneously stated that "privatization of press is not permitted". 17/09/2015. Do not accept privatization of press. Anninhthudo.vn. Visit at <http://anninhthudo.vn/chinh-tri-xa-hoi/khong-chap-nhan-hoat-dong-bao-chi-tu-nhan/633765.antd> at 18:02 on 10/5/2018

<sup>63</sup> Such as VN Express, Viet Namnet or Digital TV VTC.

<sup>64</sup> Decision No. 75-QD / TW dated 21 August 2007 of the Secretariat on the promulgation of the Regulation on the appointment, dismissal, commendation and disciplining of leaders of the press bodies and Decision No. 155-QD / TW On April 23, 2008, the Secretariat issued a regulation on the cooperation between the Central Department of Propaganda and Education, the Communist Party Civil Affairs Department of the Ministry of Information and Communications, the Party Committee of the Vietnam Journalists Association and other Party and State agencies in directing and managing the press.



<sup>65</sup> For instance, Notice No. 162-TB / TW, No. 41-TB / TW and No. 68-TB / TW on some measures to strengthen the leadership and management on the press; Decision No. 388 / QD-TTg dated 13 May 2005 of the Prime Minister; Decision No. 157-QD / TW dated 29 April 2008 of the Secretariat on the promulgation of regulations on direction, political orientation and ideology, especially in important, complex and sensitive issues in media content. Directive No. 25-CT / TW dated 31 July 2008 of the Secretariat on strengthening Communist Party building in press agencies; Decision No. 202-QD / TW dated 11-12-2008 of the Secretary of the Communist Party of Vietnam promulgating the Regulation on co-ordination and association of ideology with the organization, personnel and inspection and supervision of Party in the field of ideology, theory and journalism. Decision No. 155-QD / TW dated April 23, 2008 of the Secretariat on the promulgation of the Regulation on coordination between the Central Department of Propaganda and Education, the Party Committee of the Ministry of Information and Communications, Party Committee off Vietnamese newspapers Association and the Party and State agencies in the direction and management of the press.

<sup>66</sup> following Article 13 para.3

<sup>67</sup> Press must also attend regular monthly press meeting (or unexpectedly when there are important and complex issues) presided by the provincial Commission for Propaganda and Education. At this meeting, the provincial Department of Propaganda and Education of the Party Committee, general evaluation of information and propaganda work; The situation and orientation of politics and ideology in the contents of information of the press and in publishing activities; Note the important, complex and sensitive issues in the information and propaganda work and in the contents of publications; Set the direction, direction content in the next month. Article 3 Decision No. 722-QD / TU Promulgating the Regulation on the coordination between the provincial Department of Propaganda and Education, the Information and Communication Department, the provincial Journalists Association, the Party and government agencies in directing, press management, publishing.

Particularly for the capital Hanoi, the management is even tighter. In 2015, the Hanoi Municipal Party Committee issued Decision No. 6524-QD / TU on press conferences. Accordingly, the Regulation consists of 5 chapters, 18 articles, concretizing the Party's regulations on the coordination of leadership, direction and management of information provision and response at the information briefing session. the press of the Hanoi Party Committee. This conference is held periodically at 14h every Tuesday. At this point, the Department of Propaganda and Education will give specific instructions to the press on the information should and should not be published that week. Newspapers in the provinces are subject to the same direction. For example, on March 22, 2018, Dak Lak Provincial Department of Propaganda and Education signed the Official Letter No. 804-CV / TG to the Central Department of Propaganda and Education, requesting the press agency to suspend the transfer of 500 teachers Copper is at risk of losing jobs to avoid heating up the problem. Hai Duong. 29/0/2018. Dak Lak: It is suggested that the media not report more about over 500 teachers. Infonet.vn. Visit at link <http://mientrungtaynguyen.vn/?chitiet=4193&dak-lak--de-nghi-bao-chi-khong-dua-tin-them-ve-vu-thua-tren-500-giao-vien>. html at 11:58 on 6/5/2018.

<sup>68</sup> Law on Access to Information, No. 104/2016/QH13 on 06/4/2016.

<sup>69</sup>Committee on the Rights of the Child (2012) CRC/C/VNM/CO/3-4; Independent expert on the effects of economic reform policies and foreign debt on the full enjoyment of all human rights, particularly economic, social and cultural rights (2012), A/HRC/20/23/Add.1

<sup>70</sup>“Introduce and seek prompt passage of access-to-information legislation”. Recommendation No.46 ( A/HRC/12/11, para. 99)

<sup>71</sup>Article 2 para.3 Law on Access to Information reads “*Access to information* includes the reading, watching, listening, reproduction and photocopying of the information.”, which is a narrow definition of access to information (in terms of technical means) rather than reflecting the scope of the right to seek, receive and impart information by all means as following article 19 para.2 ICCPR.

<sup>72</sup> The Law on Access to Information only provides State authorities have obligation to provide information (Article 1 and 9) but does not require such obligation from all organisations using state assets or budget, including state-owned enterprises or non-state actors providing public services or having activities with impact on the public such as health care, environment etc, following international good practices (such as recommended by General comment No. 34: Principles of Law on Information (Article19) and RTI index.

<sup>73</sup>Article 36 para.1 provides that foreigners can only request for information “directly concerning their rights and obligations.

<sup>74</sup>Article 24 para.2 of the Law on Access to information provides that the request for information by individuals should state “*Reason, purpose of the request of information*” and the request should include “*number of ID card, citizenship card or passport*”. These requirement are deemed unnecessary and violate the right to privacy and the right to freedom of information by the incumbent, and reflected the approach of control by the authorities. In addition, Article 28, para.1 point đ provides grounds for the authorities to turn out the request of information “if the requested information was beyond the capacity to provide by the state authorities, or affect the ordinary operation of the authorities”. This provision of exception is ambiguous and can create a ground for arbitrary refusal of request of information, or investment into infrastructure and staffing to meet the right to access to information by people.

<sup>75</sup> Article 6 of Vietnam’s Law on Access to Information sets out the scope of information that citizen is not permitted to access, including (1) information classified as state secrets; (2) information that might would be harmful if accessed [1], without clarifying the definition of “state secrets”, and there is no provision to ensure public interests and to assess the possible “harmful” impact and “public interests” of the information. The information that belongs to the “state secrets” is currently set out in the Ordinance on the Protection of State Secrets (2000) and in the draft of Law on the Protection of State Secrets which is being discussed by the National Assembly, according to which the information is divided into three levels of Strictly Confidential, Top Secret and Confidential [1].However, the authority to classify state secrets as Confidential lies in the executive branch. To be specific, it is the agreement between the heads of central states agencies and the Minister of Public Security, which contains the risk of arbitrarily uses the Confidential stamp of the organizations, officials and civil servants in the executive branch. Draft Law on protection of state secrets to adjust the authority to that the Prime Minister decides the list of state secrets of the each agency and organization at central and local levels [1], however, from the regulation and promulgation of the list of state secrets, the process of using and copying information to declassifying the information in the state, there is no sign of voice or participation of any citizen representative mechanism.The draft Law also provides for the content of information classified as state secrets, which is broad, generalized, and lack of specification in each type of information, which may lead to arbitrary discretion and promulgate a list of state secrets that favors the interests of the organization, which affects the right to access to information of citizens.In addition, information classified as “harmful” is referred to in vague terms and broad scope such as “national security, international relations, social order, social security, social morality, community health” without explicitly defining the criteria and prioritizing the ensurance of public interest, whereby information must be disclosed even if it can cause damage to a particular benefit if the assessment between the “harmful” and “public interests” proves that it is necessary to prioritize public interests.In addition, public can only access documents that declassified by the government and documents that created after the Law on Access to Information takes effect, according to the law (Clause 2, Article 14 of the Decree No. 13 / 2018 / ND-CP regulates details and mechanism to implement the Law on Access to Information. This has created significant obstacles for people to access to previously created information as the responsible agency may refuse to provide information.

<sup>76</sup> Global Right to Information Rating of Viet Nam [http://www.rti-rating.org/country-data/scoring/?country\\_name=Viet\\_Nam](http://www.rti-rating.org/country-data/scoring/?country_name=Viet_Nam), Accessed on 06/06/2018

<sup>77</sup> Đặng Tâm Chánh et.al 2015, Báo chí với quyền tiếp cận thông tin [Press and the right to access to information]

<sup>78</sup>CECODES, VFF-CRT & UNDP, 2018, Provincial Governance and Public Administration Performance Index (PAPI) Report 2017: Measuring Citizens Experience.page.32. PAPI covered in 14.097 people in this survey.

<sup>79</sup>PPWG. 10/2015. Ý kiến công chúng: Đảm bảo luật tiếp cận thông tin tương thích với pháp luật hiện hành của Việt Nam và luật pháp quốc tế về quyền con người. [Public opinion: Ensuring the compatibility of the Law on Access to Information to prevailing legal framework of Viet Nam and international human rights standards]Page 25

<sup>80</sup> CARE 2015.Tăng cường khả năng tiếp cận thông tin cho phụ nữ dân tộc thiểu số (Dự án I2I)[Strengthening access to information by ethnic minorities women – Project I2I]; Action Aid Viet Nam.2015. Tóm tắt chính sách: Quyền Tiếp cận thông tin và những rào cản vô hình[Policy Brief: Right to access to information and invisible barriers]; PPWG. 10/2015. Ý kiến công chúng: Đảm bảo luật tiếp cận thông tin tương thích với pháp luật hiện hành của Việt Nam và luật pháp quốc tế về quyền con người. [Public opinion: Ensuring the compatibility of the Law on Access to Information to prevailing legal framework of Viet Nam and international human rights standards]. Page 31

<sup>81</sup>PPWG. 10/2015. Ý kiến công chúng: Đảm bảo luật tiếp cận thông tin tương thích với pháp luật hiện hành của Việt Nam và luật pháp quốc tế về quyền con người. [Public opinion: Ensuring the compatibility of the Law on Access to Information to prevailing legal framework of Viet Nam and international human rights standards]Page 31.

<sup>82</sup> Constitution 2013 Article 27 provides that citizen of above 21 years old can stand for election. However following the criteria of candidacy under Law No. 85/2015/QH13 dated 25/6/2015 on Election of the National Assembly and People’s Councils at all levels (Article 3, which refers to the criteria of National Assembly members as provided by the Law on Organisation of the National Assembly and the criteria of People Councils as provided by the Law on Organisation of local government). These criteria, for instance, would include “good health” (which may impair the capacity for candidacy by people with disabilities), “education background and expertise”, “experience” and “reputation” (which may impair youth). The Law on election also provides that candidates should be nominated by organisations and need to go through a three-round of negotiation for candidacy. Voters are not able to directly nominate for candidates. Once qualified as candidates, candidates cannot run election campaigns on their own but meeting with voters should be through organised meetings by the Fatherland Front and communications need to go through (state-own) media.

<sup>83</sup> In the Election 2016, for instance, 100% members of the National Election Council were members of the Communist Party, 100% members of the council were also standing for that very election, 100% of them got elected.

<sup>84</sup> Law No. 85/2015/QH13 dated 25/6/2015. For instance, 20

<sup>85</sup> Article 69 para.2 Law on Election, Law No. 85/2015/QH13 dated 25/6/2015. However, there seemed no specific instrument to prevent proxy voting. Voters are required to show voting registration but do not have to show ID as they vote.

<sup>86</sup> Andrew Wells-Dang, Le Kim Thai and Nguyen Tran Lam (2015). Between Trust and Structure: Citizen Participation and Local Elections in Viet Nam. A Joint Policy Research Paper on Governance and Participation commissioned by Oxfam in Viet Nam and the United Nations Development Programme (UNDP) in Viet Nam. Ha Noi, Viet Nam: August 2015

<sup>87</sup> Article 73 of the Law on Election provides that the ballot counting should be done at the voting stations with two witness as voters, plus election candidates, representatives of organisations nominate candidate or candidate’s representatives and reporters could join the ballot counting.

<sup>88</sup> The announcement of the election results will be done by the National Council for Election 20 days after the National Assembly election, and 10 days after the People’s Council election, as provided by Article 86 of the Law on Election 2015.

<sup>89</sup> “The Committee urges the State party to amend its legislation by , inter alia, expediting the adoption of the draft law on associations, in order to establish a genuine and real freedom of association which is necessary for children.” (CRC/C/VNM/CO/3-4, 2012, para.42).

<sup>90</sup>The Special Rapporteur on Freedom of Religions or Beliefs, in his country visit in 2014 to Viet Nam, has recommended that: (g) Religious or belief communities that, for whatever reasons, do not have or do not wish to have registration status under the current Ordinance 21 (or the future law replacing the Ordinance), should have efficient access to an alternative form of legal personality status, which they may need to undertake important community functions. This requires respective reforms of the law of associations, as currently under discussion; (A/HRC/28/66/Add.2, para (g) 2015).

<sup>91</sup>Recommendations No. 143.15 by Lithuania, No.143.144 by Italy, No.143.165 by Poland, No.143.169 by Spain, No.143.172 by France and No.143.173 by Ireland (UN Document No. A/HRC/26/6 and A/HRC/26/6/Add.1). In addition to this, Viet Nam has accepted one recommendation from Norway in 2009 “to Adopt appropriate measures to disseminate widely and ensure full observation of General Assembly resolution 53/144” (A/HRC/12/11 (UPR, 2009) para. 99, No 49).

<sup>92</sup> Recommendations No.143.169 by Spain (UN Document No. A/HRC/26/6 and A/HRC/26/6/Add.1).

<sup>93</sup>For instance, Decree 45 requires a three-step approval to establish an association: (1) establishment of a founding committee to advocate for the establishment of the association, such committee would need approval by the government; (2) Acquire approval by the government for the application of establishing the association; (3) Organise a congress of the association, after that the chapter and the leader appointment of the association would need a final approval from the government for the association registration come to effect ( Article (6, 7, 9, 10, 12, 13). It also provides that “the (new) association’s main area of activities should not be duplicated with legally established associations” (Article 5 para.1), which effectively created a monopoly in the exercise of associations and impaired the exercise of freedom of association. To establish an association in Vietnam, the prevailing procedure requires three compulsory administrative procedures: (i) establish a founding committee to advocate for the association, which needs an authorisation from the Government (ii) Filling an application for the approval by the Government (iii) Organise a congress of the association, after which the chapter of the association and its leaders would need authorisation by the Government (following Articles 6, 7, 9, 10, 12, 13). This decree also provides that “main area of activities of the incumbent association is not overlap with main area of activities of legally established associations” (Article 5 para 1), which created the monopoly of association and affected the exercise of freedom of association.

<sup>94</sup> The Fatherland Front, Ho Chi Minh Communist Youth, Vietnamese Women’s Union, Vietnamese Union of Veterans and the Vietnam General Confederation of Trade Union, deemed as “mass organisations of the Communist Party to organise (people) to implement the policy of the party across classes in the society” “are mass organisations of the party, are instrumental in organising people to implement the Party’s policy and strategies”. Tạp chí xây dựng Đảng, 2013, Tài liệu bồi dưỡng thi nâng ngạch chuyên viên cao cấp khối Đảng và đoàn thể năm 2013, Chuyên đề 4, Đổi mới nội dung phương thức hoạt động của Mặt trận Tổ quốc Việt Nam và các Đoàn thể chính trị xã hội [Journal on Party Institutional Development. 2013. Manual on training for examination for promotion of senior specialists in the Party and Mass organisation](<http://www xaydungdang.org.vn/Home/vankientulieu/2013/6564/7-chuyen-de-thi-chuyen-vien-cao-cap-nam-2013.aspx>, accessed on 1/4/2018).

<sup>95</sup>“Specialised associations”. Article 33 of Decree 45/2010/NĐ-CP. Decision No 68/2010/QĐ-TTg dated 01/11/2010 detailed this provision. On the support and budget allocation for specialised associations, the Prime Minister issued Decision No. 71/2011/QĐ-TTg. Article 34 of Decree 45/2010 stipulated that [specialised associations] are provided budget for operation following the assigned number of staff; ensured budget to implement assignments by the state and provided with infrastructure and means of operation; are encouraged and facilitated to take part in a number of government’s activities, public services; conduct social advisory, critics and monitoring activities; implement program, proposals and projects.”

<sup>96</sup> Article 8 para.7, Law on State Budget 2015.

<sup>97</sup> Article 6, para 2.

<sup>98</sup> The association of patients of breast cancer whose leader was a patient, was not qualified.

<sup>99</sup> Decree 93/2009/ND-CP on the promulgation of the regulations on the management and use of international non-governmental aid. Accessed at [http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class\\_id=1&mode=detail&document\\_id=91243](http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=1&mode=detail&document_id=91243) on 30/6/2018. A draft of the revision of the decree in 2016 is available at <https://thuvienphapluat.vn/vanban/Tai-chinh-nha-nuoc/Nghi-dinh-Quan-ly-su-dung-nguon-vien-tro-phi-chinh-phu-nuoc-ngoai-2016-324550.aspx> (accessed on 30/6/2018).

<sup>100</sup> Many groups found their registration difficult or refused based on unreasonable reasons such as (i) no umbrella agency, (ii) an organization operating in the same field already existed, (iii) requirement for joining another existing association, (iv) because it is "not necessary, not appropriate", (v) no response after submission of the application (People Participation Working Group. 2016, *Đời sống hiệp hội từ góc nhìn người dân*, [Life of associations from the view of people] . Knowledge Publishing House . Page 38.) This research found out 63% participants experienced at least one barrier involving: (i) application for the organisation's license. (ii) being requested by authorities to report on the organisation of activities (iii) interference by authorities to dissolve or preventing them from organising activities, or (iv) intervened by authorities to change content or methodologies of the activity. In terms of operation, a project would need approval and therefore might be refused due to reason as "sensitive topics", [which would include topics such as democracy or human rights] (Lê Quang Bình và cộng sự, 2016, *Nghiên cứu việc thực hiện quyết định 93/2009/NĐ-CP của các tổ chức nhận viện trợ*).

<sup>101</sup> Viet Nam Justice Index 2015, available at <https://chisocongly.vn/chi-so-cong-ly/>

<sup>102</sup> Constitution 2013 article 10 reads "**The Trade Union** is the socio-political organisation of the working class and labourers, established on a voluntary basis that represents the workers, looks after and protects the legitimate and legal rights and interests of the workers;.." which technically recognises one trade union (VGCL).

<sup>103</sup> Law on Trade Union No. 12/2012/QH13 provides that Trade Union is under the leadership of the Communist Party of Viet Nam (Article 1).

<sup>104</sup> Law on Trade Union, Article 5 para.1

<sup>105</sup> Following Article 5.2, 6 and 7 of the Law on Trade Union.

<sup>106</sup> [http://www.ilo.org/hanoi/Informationresources/Publicinformation/comments-and-analysis/WCMS\\_620717/lang--vi/index.htm](http://www.ilo.org/hanoi/Informationresources/Publicinformation/comments-and-analysis/WCMS_620717/lang--vi/index.htm)

<sup>107</sup> Recommendations No.143.15 (from Lithuania), No.143.147 (from Belgium), No.143.171 (from Germany), No.143.172 (from France) and No.143.175 from Australia (UN Document No. A/HRC/26/6 and A/HRC/26/6/Add.1).

<sup>108</sup> Viet Nam's explanation of the vote (abstention) before the vote of the draft resolution L.21 (Resolution 31/37 of the Human Rights Council). Access

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=18535&LangID=E>

<sup>109</sup> Decree 38/2005/NĐ-CP did not refer to or take into account Law No. 101/SL-L-003 on the right to freedom of meeting and assembly dated 20/5/1957. Article 2 of Law 101 provides an exemption of permission for assembly of family members, friends and acquaintances, meetings of legal associations in their office, normal religious exercise by religious organisations at their religious places, activities of the Fatherland Front, and public meetings by members of the Front.

<sup>110</sup> Including the involvement of international participants (online and offline) or funding from international organisations (Decision 76/2010, article 1)

<sup>111</sup> Ministry of Public Securities and Ministry of Foreign Affairs.

<sup>112</sup> For instance, testimonies from protesters were collected at <https://www.facebook.com/NhatKyBieuTinh/> (accessed on 10/7/2018).

<sup>113</sup> See also Spokesperson for the UN High Commissioner for Human Rights. Press briefing note on Viet Nam. 13/5/2016 Accessed at

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19961&LangID=E>  
10/7/2018

<sup>114</sup> HRC resolution 31/37 on the promotion and protection of human rights in the context of peaceful protests. HRC 32<sup>nd</sup> session 66<sup>th</sup> meeting 24 March 2016. A/71/53. Available at

[http://www.un.org/ga/search/view\\_doc.asp?symbol=A/HRC/31/L.21](http://www.un.org/ga/search/view_doc.asp?symbol=A/HRC/31/L.21)

<sup>115</sup> Recommendation No.143.193 by Kyrgyzstan. (UN Document No. A/HRC/26/6 and A/HRC/26/6/Add.1).

<sup>116</sup> Constitution 2013, Article 61; Law on Education, Law No. 38/2005/QH11 dated 14/6/2005. A revision of this law planned to be adopted at 6<sup>th</sup> session of the 14<sup>th</sup> National Assembly (10/2018) maintains this provision.

<sup>117</sup> Ministry of Planning and Investment – Center for National Social and Economic Information and Forecast. Ministry’s survey on “Status of household’s investment for children’s education in Viet Nam, 2015-2016”. Accessed to a summary of the survey result at <http://ncif.gov.vn/Pages/NewsDetail.aspx?newid=18779> on 01/7/2018. A consumers survey by Niesel in 8/2016, quoted in the briefing from HSBC annual report “Value of Education” released on 29/6/2017 provided this number as 47% (Accessed at <https://www.hsbc.com/news-and-insight/media-resources/media-releases/2017/the-value-of-education-higher-and-higher-on-30/6/2018>)

<sup>118</sup> Such as school infrastructure fee, fee for sanitation, electricity, water etc.

<sup>119</sup> Recommendations No.143.182 (Timor Leste), 143.188 (Singapore), 143.189 (Turkey), 143.190 (Cuba), 143.195 (Kazakhstan), 143.196 (Afghanistan), 143.197 (Senegal) 143.198 (Venezuela), 143.200 (Bhutan), 143.201 (India), 143.203 (Algeria), 143.204 (Sirya), 143.212 (South Sudan), 143.224 (Morocco). UN Document No. A/HRC/26/6 and A/HRC/26/6/Add.1.

<sup>120</sup> UNDP Viet Nam (2015). National Human Development Report.

<sup>121</sup> Michael Bourdillon and Jo Boyden. 2014. Growing Up in Poverty: Findings from Young Lives. Palgrave Macmillan; and Nguyen Tran Lam et al (2013). Social Exclusion among Ethnic Minorities in Viet Nam. Paper presented at ACFID University Linkages Conference 2013: Development Futures: Alternative pathways to end poverty. Sydney, Australia quoted in Oxfam’s briefing paper (2017) Even it up: How to tackle inequality in Viet Nam. Accessed at [https://www.oxfam.org/sites/www.oxfam.org/files/file\\_attachments/bp-Viet-Nam-inequality-120117-en.pdf](https://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/bp-Viet-Nam-inequality-120117-en.pdf) on 01/7/2018.

<sup>122</sup> Circular 10/2016/TT-BGDĐT on the Promulgation of Regulations for students affairs in public universities, Article 6 restricts students from take part in demonstration (para.4), exercise of religious activities (para. 7) and a activities and number of forms of expression (para. 9); Circular 10/2017/TT-BLĐTĐ on the Promulgation of Regulations for student affairs in vocational schools and colleges, Article 5, para.8 and 9. Decision 46/2007/QĐ-BGDĐT forbids students from “illegally gather, establish association or clubs in the school” Article 3 para. 1. In a survey covering more than 200 students from different universities, 19,8 % responded that they have received request from their university not to express themselves in social media regarding political affairs, 30,8% responded that they were requested by their universities not to take part in protests. Students in this survey also reflect that the exercise of the right to expression on social media or peaceful demonstration would result in some form of disciplines for them.

<sup>123</sup> The group “students speak for students” found 32 universities and colleges had some forms of notice on their website regarding giving disciplines to students who did not vote in the Election 2016. In the above-mentioned survey, 11,9% students reported that they were requested to present used voter’s registration as the proof for their votes. (Note that voting is not compulsory in Viet Nam).

<sup>124</sup> “Chính sách xã hội hóa”.

<sup>125</sup> Recommendation No.143.87 from the Netherlands. UN Document No. A/HRC/26/6 and A/HRC/26/6/Add.1.

<sup>126</sup> UNDP, CECODES, RTA and the Centre for Research and Training of the Viet Nam Fatherland Front. 2017. PAPI report: The Viet Nam Provincial Governance and Public Administration Performance Index Measuring citizens’ experiences 2017. Page 13-14. Accessed at [http://congbo2017.papi.org.vn/eng/wp-content/uploads/2018/04/2017PAPI\\_Report\\_ENG.pdf](http://congbo2017.papi.org.vn/eng/wp-content/uploads/2018/04/2017PAPI_Report_ENG.pdf) on 05/7/2018. In addition, the same report showed that, the number of women said they did not have their names on the certificate because they were not the head of the

household dropped from 11.14%(2016) to 7.93%(2017),the percentage of women who did not have land use right certificate because their spouse's name was on the certificate dropped from 12.58%(2016) to 11.30%(2017).

<sup>127</sup> Viet Nam has accepted one recommendation on “taking necessary measures to prevent and halt persecution, forced eviction and confiscation of ethnic and religious minorities” )Recommendation No.143.214 from Mexico. UN Document No. A/HRC/26/6 and A/HRC/26/6/Add.1

<sup>128</sup> Constitution 1980, currently Constitution 2013 Article 53.

<sup>129</sup>Viet Nam Provincial Governance and Public Administration Performance Index (UNDP, CECODES, RTA and the Centre for Research and Training of the Viet Nam Fatherland Front. 2017. PAPI report: The Viet Nam Provincial Governance and Public Administration Performance Index Measuring citizens' experiences 2017. Page 13-14. Accessed at [http://congbo2017.papi.org.vn/eng/wp-content/uploads/2018/04/2017PAPI\\_Report\\_ENG.pdf](http://congbo2017.papi.org.vn/eng/wp-content/uploads/2018/04/2017PAPI_Report_ENG.pdf) on 05/7/2018

<sup>130</sup> This number seemed to reduce slightly from 9%(2014) to 7%(2017), PAPI-2017.

<sup>131</sup> UNDP, CECODES, RTA and the Centre for Research and Training of the Viet Nam Fatherland Front. 2017. PAPI report: The Viet Nam Provincial Governance and Public Administration Performance Index Measuring citizens' experiences 2017. Accessed at [http://congbo2017.papi.org.vn/eng/wp-content/uploads/2018/04/2017PAPI\\_Report\\_ENG.pdf](http://congbo2017.papi.org.vn/eng/wp-content/uploads/2018/04/2017PAPI_Report_ENG.pdf) on 05/7/2018

<sup>132</sup>Land Law No. 45/2013/QH13 on 29/11/2013, Article 62, in particular para (d) for housing and new urban development projects and para (đ) for mining projects.

<sup>133</sup> Most recently the case of Thủ Thiêm district in Ho Chi Minh city, where 15 thousand households were displaced. See Walter Ross Grant. 2014. Eviction of the Past: A Development Analysis of Forced Displacement-Resettlement in Thu Thiem Ward, Ho Chi Minh City. Thesis Submitted to Saint Mary's University, Halifax, Nova Scotia in Partial Fulfillment of the Requirements for the Degree of Bachelor of Arts in International Development Studies (Honours) Accessed at [http://library2.smu.ca/bitstream/handle/01/25811/grant\\_walter\\_r\\_honours\\_2014.pdf?sequence=1&isAllowed=y](http://library2.smu.ca/bitstream/handle/01/25811/grant_walter_r_honours_2014.pdf?sequence=1&isAllowed=y) on 05/7/2018.

<sup>134</sup> Notably, the eviction of Lien Tri Pagoda built in 1940 and the plan to evict Thu Thiem Parish Church in Thu Thiem area among several cases. The case of Lien Tri Pagoda and Thu Thiem Parish Church were noted in Walter Ross Grant. 2014. Eviction of the Past: A Development Analysis of Forced Displacement-Resettlement in Thu Thiem Ward, Ho Chi Minh City. Thesis Submitted to Saint Mary's University, Halifax, Nova Scotia in Partial Fulfillment of the Requirements for the Degree of Bachelor of Arts in International Development Studies (Honours) Accessed at [http://library2.smu.ca/bitstream/handle/01/25811/grant\\_walter\\_r\\_honours\\_2014.pdf?sequence=1&isAllowed=y](http://library2.smu.ca/bitstream/handle/01/25811/grant_walter_r_honours_2014.pdf?sequence=1&isAllowed=y) on 05/7/2018.

<sup>135</sup>Decree No 02/CP dated 15/01/1994 of the Government on the allocation of forest land for organisations, households and individuals for long-term use in the forestry purpose; Decree No 163/1999/NĐ-CP dated 16/11/1999 on the allocation and contract of forest land for organisations, households and individuals for long-term use in the forestry purpose; Decision No 178/2001/QĐ-TTg dated 12/11/2001 on benefits and obligations of households and individuals contracted with forest and forest land; Decree No200/2004/ND-CP (2004) and Decree No 118/2014/ND-CP (2014) on land and forest allocation for households.

<sup>136</sup> Trúc Hà. Chính sách giao đất, giao rừng đã góp phần huy động các nguồn lực bảo vệ, phát triển rừng[Policy on forest and forest land allocation helped to mobilise resources for the forest protection and development]. Reported the Workshop on Implementation of the policy and legal instrument for land and forest allocation to communities and households of ethnic minorities and mountainous areas in 2006-2016. Published on 28/9/2017, accessed at <http://www.bienphong.com.vn/chinh-sach-giao-dat-giao-rung-da-gop-phan-huy-dong-cac-nguon-luc-bao-ve-phat-trien-rung/> on 05/7/2018.

<sup>137</sup> Mekong Region Land Governance Program. 2016. Promotion of The Reallocation of Forest Land from State Company to Local Ethnic Minority People: A Case Study In Dak Nong Province. Accessed at <http://mrlg.org/resources/promotion-of-the-reallocation-of-forest-land-from-state-company-to-local-ethnic-minority-people-a-case-study-in-dak-nong-province/> on 05/7/2018. The study showcased two communes in Quang Binh province which covered 81,4% forest land area of one district, among these areas 91% belongs to state forest enterprises and only 5.4% went to local people. 50% of the population in these two communes are ethnic minority of Van Kieu, among them 80% are living under the poverty line.

<sup>138</sup> Noted firstly by Dr. Doan Diem at the Consultative workshop on the Decree to implement a number of provisions of the Forest Law, Buon Ma Thuot city, 8/6/2018. Later, another participant of the workshop, Dr. Tran Ngoc Thanh remarked that in a major forestry areas with ethnic minorities inhabitants like Dak Lak province, the forest land allocated to communities accounted 0.01% of the total forest land.

<sup>139</sup> UN Document No. A/HRC/4/18. Available at [https://www.ohchr.org/Documents/Issues/Housing/Guidelines\\_en.pdf](https://www.ohchr.org/Documents/Issues/Housing/Guidelines_en.pdf)

<sup>140</sup> Law on Marriage and Family, No. 22/2000/QH10, dated 9 June 2000, currently expired, Chapter II, Article 10, Paragraph 5, retrieved from <http://vbpl.vn/TW/Pages/vbpq-toanvan.aspx?ItemID=6117>, accessed 7 June 2018.

<sup>141</sup> Law on Marriage and Family 2014, No. 52/2014/QH13, dated 19 June 2014, effective since 01 January 2015, Chapter II, Article 8, Paragraph 2, retrieved from <http://vbpl.vn/TW/Pages/vbpqen-toanvan.aspx?ItemID=11018>, accessed 25 June 2018.

<sup>142</sup> Civil Code (Revised) 2015, No. 91/2015/QH13, dated 24 November 2015, entry into force since 01 January 2017, Chapter III, Section 2, Article 37, retrieved from <http://vbpl.vn/TW/Pages/vbpq-toanvan.aspx?ItemID=95942>, accessed 8 June 2018.

<sup>143</sup> The 14<sup>th</sup> National Assembly, The 5<sup>th</sup> Session Agenda, dated 21 May 2018, retrieved from <http://quochoi.vn/hoatdongcuaquochoi/cackyhophquochoi/quochoikhoaxIV/kyhophthunam/Pages/chuong-trinh-lam-viec.aspx?ItemID=35563>, accessed 7 June 2018.

<sup>144</sup> Self-identified more LGBT students were exposed to violence than non-LGBT students. Particularly, 71% of LGBT students experienced physical violence, 72.2% verbal abuse and 65.2% psychological violence. UNESCO, 2015, "Reaching Out: Preventing and Addressing SOGIE-related School Violence in Viet Nam", page 30, section 5.3.1., paragraph 1, retrieved from <http://unesdoc.unesco.org/images/0024/002469/246928E.pdf>, accessed 7 June 2018. In employment, a study in 2015 indicated that nearly 30% of LGBT participants were denied of job applications for being LGBT although they were qualified, the percentage of transgender people with rejected job applications (59.0%) is three times higher than those of homosexual and bisexual people (19.6%). Not only that, 13.8% of LGBT people reported that they were underpaid compared to their peers with the same capacity, 22.6% of LGBT people felt they were restricted in promotion, and hardly to achieve higher positions. SEE, 2015, "Is this because I am LGBT?", page 51, Table 5, retrieved from [http://www.thuvien.lgbt/s/iSEE\\_SOGI-Discrimination-in-Viet-Nam.pdf](http://www.thuvien.lgbt/s/iSEE_SOGI-Discrimination-in-Viet-Nam.pdf), accessed on 7 June 2018.

<sup>145</sup> Viet Nam has accepted eight recommendations in 2014 regarding the rights of people with disabilities (No.143.48 (Myanmar), No. 143.54 (DPR Korea), No.143.55 (Kazakhstan), No.143.56 (Russia), No.143.194 (Iran), No.143.205 (Indonesia), No.143.206 (Libya), no.143.207 (Argentina). UN Document No. A/HRC/26/6 and A/HRC/26/6/Add.1) together with eight recommendations from 2009.

<sup>146</sup> By Decision No. 1019/QĐ-TTg of the Prime Minister dated 05/8/2012

<sup>147</sup> Ministry of Transport. Phát triển giao thông tiếp cận cho người khuyết tật là nhiệm vụ quan trọng của Ngành GTVT [Development of accessible transport for people with disabilities an important mission by the transport industry]. (Note from the meeting between Deputy Minister Le Dinh Tho with the monitoring mission of the National Committee on People with Disabilities). Accessed at <http://mt.gov.vn/khcn/tin-tuc/45143/nguoi-khuyet->



[tat-la-doi-tuong-phuc-vu-dac-biet-va-viec-phat-trien-gtvt-cho-nguoi-khuyet-tat-la-mot-trong-nhung-nhiem-vu-quan-trong-cua-nganh-gtvt.aspx](#) on 05/7/2018.

<sup>148</sup> Testimonies collected through our working group and at the National and Regional Consultation of this submission.

<sup>149</sup> Recommendations No.143.149 (Luxembourg), No.143.162 (Norway), No.143.160 (Czech) and No.143.167(Tunisia). Tunisia (UN Document No. A/HRC/26/6 and A/HRC/26/6/Add.1).

<sup>150</sup> “Give individuals, groups and organs of society the legitimacy and recognition to promote human rights and express their opinions or dissent publicly” (Recommendation No.143.162 from Norway (UN Document No. A/HRC/26/6 and A/HRC/26/6/Add.1).

<sup>151</sup> Viet Nam’s explanation of the vote before the vote on L.28 (Resolution 31/28 of the Human Rights Council, session 31th). OHCHR. Human Rights Council adopts six resolutions and closes its thirty-first regular session. Accessed at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=18535&LangID=E> on 01/7/2018

<sup>152</sup> UN WAD. [Opinion No. 27/2017 concerning Nguyen Ngoc Nhu Quynh - Viet Nam, A/HRC/WGAD/2017/27; Opinion No. 40/2016 concerning Nguyen Dang Minh Man - Viet Nam, A/HRC/WGAD/2016.](#)

<sup>153</sup> Recommendations No.143.34 (Norway), No.143.150 (Finland), No.143.151 (Denmark), No.143.157 (Canada) and No.143.166 (Sweden).

<sup>154</sup> Similar to those provisions by articles 88 and 258 of the Penal Code 2009, now coded at article 117 and 331 of the Penal Code 2015.

<sup>155</sup> List of prisoners of conscience by the Association of former prisoners of conscience. Available at <http://fvpoc.org/danh-sach-tnlt-list-of-poc/>